

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs December 11, 2009

JASON SHERWOOD v. STATE OF TENNESSEE

Appeal from the Chancery Court for Davidson County
No. 08-1766-IV Russell T. Perkins, Chancellor

No. M2009-01412-COA-R3-CV - Filed December 22, 2009

Inmate in the custody of the Tennessee Department of Correction appeals the dismissal of his petition for a common law writ of certiorari. Finding no error, we affirm the trial court's decision.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

RICHARD H. DINKINS, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR. and ANDY D. BENNETT, JJ., joined.

Jason Paul Sherwood, Mountain City, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter, Michael E. Moore, Solicitor General, and Kellena Baker, Assistant Attorney General, Nashville, Tennessee, for the appellee, State of Tennessee.

MEMORANDUM OPINION¹

Petitioner, an inmate of the Tennessee Department of Correction ("TDOC"),² appeals the dismissal of his petition for a common law writ of certiorari through which petitioner sought to recover personal property allegedly taken from his cell in the course of an inspection by prison

¹ Tenn. R. Ct. App. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

² The events giving rise to this proceeding occurred while Petitioner was incarcerated at Turney Center, Only, Tennessee (Hickman County). Petitioner is now housed at Northeast Correctional Facility, Mountain City, Tennessee.

authorities. Although the record is not entirely clear, it appears that Petitioner filed an internal grievance relating to the missing property and did not receive satisfaction through that process. The grievance hearing minutes reflect the following disposition: “HSA staff should attempt to locate the missing property. If they can’t, the grievant should file a State Claims Form.” In his petition, filed in Davidson County Chancery Court, Petitioner sought “full replacement value” of his property, compensatory damages and costs and named TDOC staff members “Whitworth, Primm, Demonbran, Jordan” as respondents. His petition was amended to add a claim for declaratory relief, to name “Sgt. N. Jordan, Lt. Yarbrough, Whitworth and Primm” as respondents and, apparently, to assert a claim under 42 U.S.C. § 1983³ for an alleged violation of his rights to due process of laws.

Respondents Whitworth and Jordan subsequently filed a Motion to Dismiss pursuant to Rule 12.02 (1), (3) and (6), Tenn. R. Civ. P., to which Petitioner responded by filing a “Motion to Amend Petition for Writ of Certiorari” in which he sought to “include objections for abuse of discretion against Claims Commissioner Stephanie Reeves” in violation of Tenn. Code Ann. § 9-8-403.⁴ The remainder of Petitioner’s motion responded to the motion to dismiss.

The trial court subsequently entered an order granting Respondents’ motion and dismissing the Petition. The court found that, pursuant to Tenn. Code Ann. § 41-21-803, venue for the action lied in Hickman County, that transfer of the action in accordance with Tenn. Code Ann. § 16-1-116 would not serve the interest of justice since Petitioner had previously filed an action with the Tennessee Claims Commission and, consequently, waived his cause of action against the Respondents. The court also held that the Petition failed to state a cause of action against the Respondents in their individual capacities pursuant to 42 U.S.C. § 1983. It is from this order that Petitioner appeals.

I. Discussion

Tenn. Code Ann. § 9-8-307(a)(1)(F) gives the Tennessee Claims Commission exclusive jurisdiction to hear monetary claims based on the acts or omissions of state employees for negligent care, custody or control of personal property. Pursuant to Tenn. Code Ann. § 9-8-307(b) a claim filed under subsection (a) “shall operate as a waiver of any cause of action, based on the same act or omission, which the claimant has against any state officer or employee.” In *Haley v. University of Tennessee-Knoxville*, 188 S.W.3d 518 (Tenn. 2006), the Tennessee Supreme Court held that the statute “imposes a strict election of remedies requirement” and that “[t]he moment the plaintiff’s claim is ‘filed’ with the Claims Commission, the plaintiff has waived all other causes of action against any state officer or employee based on the same act or omission.” *Id.* at 524.

³ 42 U.S.C. § 1983 subjects to liability any person who, under color of law, causes the deprivation of “rights, privileges or immunities secured by the Constitution and laws” to the person so deprived.

⁴ Tenn. Code Ann. § 9-8-403 governs proceedings before the Tennessee Board of Claims.

Inasmuch as Petitioner filed a proceeding with the Claims Commission relative to the loss of his property, he has waived any other cause of action arising out of the same facts.⁵ The trial court did not err in holding that the statutory waiver operated to bar this action.

Likewise, the trial court correctly dismissed Petitioner's 42 U.S.C. § 1983 claim. Petitioner named the Respondents in the caption "Individually and in their Official Capacit[ies]" and a fair reading of the Petition, construed liberally in Petitioner's favor, fails to make specific allegations against or seek damages from any Respondent in his or her individual capacity but, rather, complains only of their official acts as staff members employed by the TDOC. 42 U.S.C. § 1983 does not authorize a suit against the state or a suit for damages against state officials in their official capacities. *Hamilton v. Cook*, 1998 WL 704528 at *9 (Tenn. Ct. App. Oct. 12, 1998).

For the foregoing reasons, we affirm the judgment of the trial court and remand the case for the collection of costs accrued therein. Costs of this cause are assessed to Jason Sherwood.

RICHARD H. DINKINS, JUDGE

⁵ The record reflects that the Claims Commission proceeding was determined prior to the institution of this action; the disposition of the Claims Commission proceeding is not before us.